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February Issue

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BOSTON CLEVELAND SPRINGFIELD

BERGER WINS PLEA OF UNFAIR TRIAL IN CHICAGO BY LANDIS

Socialists' Affidavit of Prejudice Upheld by Supreme Court, 6 to 3.

NOT FREED OF CHARGE

Decision, Based in Desire for Absolute Justice, Affects Four Others.

CASES MAY BE RETRIED

Department of Justice Confident Another Conviction of Conspiracy Can Be Secured.

Special Despatch to THE NEW YORK HERALD, New York Herald Bureau, Washington, D. C., Jan. 31.

The United States Supreme Court today upheld the contention of Victor L. Berger, Milwaukee Socialist, and four of his associates in the Socialist party, that Judge Keneaw Mountain Landis of the Federal District Court of Chicago was not qualified to preside at the trial and to sentence them to twenty years imprisonment for violation of the espionage law.

The decision, handed down by a 6 to 3 vote, held that Judge Landis should have allowed another judge to preside when Berger and his friends filed with the court an affidavit alleging that in sentencing a German-American in a similar case a short time before he had displayed a prejudice against those of German or Austrian extraction.

The result of the decision probably will mean a new trial for the Socialists, but with some Federal Judge other than Judge Landis presiding. Berger and the others were not in any way freed from the charge by the decision, and Department of Justice officials here believe the case was conclusive against them and that another conviction will be obtained. Those sentenced to prison by Judge Landis with Berger were Adolph Germer, national secretary of the Socialist party; William F. Kruse, editor of the Young Socialists Magazine; Irwin St. John Tucker and J. Louis Engdahl, Socialist lecturers.

Three Questions Answered.

Judge Landis was not held by the Supreme Court to have been guilty of the Socialists' charge of prejudice and bias, but the court decided that in the insurance of absolute justice it would have been wiser for him to allow another judge to preside.

The case came before the court when, during the consideration of Berger's appeal, the Circuit Court of Appeals certified three questions for answer. This was done because of few precedents for Landis's actions. The questions were:

1. Was the affidavit of prejudice sufficient to invoke the law requiring a change of venue? To this the Supreme Court answered yes.

2. Did Judge Landis have the right to pass upon the sufficiency of the affidavit which involved alleged prejudice on his part? The answer was yes.

3. Did Judge Landis have the right to preside at the trial? The answer was no.

The division of the court disclosed a sharp conflict of views. Chief Justice White, Justice McKenna, Holmes, Van Devanter, Brandeis and Clarke forming the majority and Justices Day, Pitney and McReynolds being the dissenters.

Justice McKenna in reading the majority opinion stated that Federal Judges should allow another judge to preside if any charge of prejudice, substantiated in any particular, is presented against them. The view of the court was that the Judge should lean toward the defendants in order to insure absolute justice.

Judge Landis in overruling the request for another judge to try the case presented the official stenographic report of the remarks he made which the Socialists claimed revealed prejudice. These were not the same as those quoted in the affidavit of prejudice, and the judge claimed the affidavit was not based on facts. To this the court replied that if the affidavit were false the Socialists were subject to prosecution for perjury.

Case Far From Finished.

Under today's ruling the case probably will not be finally decided until a District Court again tries the case, a Circuit Court of Appeals passes upon that decision and that in turn is brought to the Supreme Court.

Justice McReynolds in a dissenting opinion strongly upheld Judge Landis, while Justices Day and Pitney, also dissenting, claimed that Judge Landis should have been upheld because the official report of his remarks, alleged to be prejudicial, showed an entirely different attitude of mind from that which the affidavit attributed to him. Justice McReynolds said:

"The affidavit discloses no adequate grounds for believing that personal feeling existed against any one of them. The indicated prejudice was toward certain malevolent men from Germany, a country then engaged in Hunnish warfare, and notoriously encouraged by many of its natives who unhappily had obtained citizenship here. The words attributed to the Judge (I do not credit the affidavit's accuracy) may be fairly construed as showing detestation for a crowd of Germans then engaged in abusing privileges granted by our indulgent laws."

"Of course no judge should preside if he entertains actual personal prejudice toward any party, and to this obvious disqualification Congress added honestly entertained belief of such prejudice when based on fairly adequate facts and circumstances. Intense dislike of a class does not render the judge incapable of administering complete justice to one of its members. A public officer who entertained no aversion toward disloyal German immigrants during the late war was simply unfit for his place. And while an overbearing judge is no well-tuned cymbal, neither is an amorphous dummy unresponsive to human emotions, becoming receptive for judicial power."

"It was not the purpose of Congress to empower an unscrupulous defendant seeking escape from merited domestic enemies in time of national danger. The concern of the judge as such in these matters is indeed small, but the concern of the public is enormous."

BERGER HAILS RULING AS RETURN TO SANITY

'Nothing to Retract; Proved My Loyalty,' He Says.

MILWAUKEE, Jan. 31.—In a statement issued this afternoon Victor L. Berger said:

"In view of the plain wording of the Federal statute of 1913 compelling a Federal Judge to give way to another Judge whenever a sworn affidavit of prejudice is filed, and also because of Judge K. M. Landis's public utterances about German-Americans, Socialists and radicals before and after the trial, the decision of the Supreme Court could not be any different and stand the light of reason."

"Still, I hail this decision as the first real sign of returning sanity in our ruling class."

"As a matter of fact, the Chicago trial was simply a conspiracy of the 'trusts' and the profiteers against the Socialist party. I was picked out as the one member of the national executive committee who was of German extraction and because the Socialist party is strong in Milwaukee, and furthermore because I dared to be a candidate for the United States Senate against Woodrow Wilson's favorite."

"The conspiracy has failed and I have nothing to retract from anything I have written or said about the war or about those who pushed us into this war."

"If what I said or wrote was error citizens holding contrary opinions had an equal right to speak and publish their opinions so that the public might hear both sides."

"I have proved my love for this my country, by a life of labor in it and for it, by striving constantly with all my energy to improve the condition of my fellow men."

"And finally I have proved my love for America, by a life of labor in it and for it, by risking my liberty in defense of the constitutional right of all American citizens to discuss freely and fully the official acts and policies of their public servants."

"The law under which such suppression was enforced is a flat denial of rights guaranteed every citizen by the Constitution."

EUGENE DEBS JOYOUS OVER BERGER VICTORY

ATLANTA, Jan. 31.—Eugene V. Debs, in the Federal prison here, expressed great pleasure to-day on receiving the news of the decision of the United States Supreme Court in the cases of Victor L. Berger and four other Socialist leaders, but declined to make any comment on President Wilson's refusal to commute his sentence.

Discussing the decision, Debs said in a statement that "the reversal will have a wholesome effect throughout the country."

"I didn't see how anything else could happen when the Supreme Court reviewed all the facts in the case," the statement continued. "Mr. Berger and his friends should never have been found guilty in the first place."

PRESIDENT REJECTS PLEA TO FREE DEBS

Amnesty for Political Prisoners Receives Distinct Setback.

Special Despatch to THE NEW YORK HERALD, New York Herald Bureau, Washington, D. C., Jan. 31.

Propaganda for general amnesty for political prisoners received a distinct setback to-day when President Wilson disapproved a recommendation made by Attorney-General Palmer for commutation of the sentence of Eugene V. Debs.

Although it was known that the President looked with disfavor on interviews given by Debs from the Atlanta penitentiary, his prompt disapproval of the Attorney-General's recommendation came somewhat as a surprise. It is the first time the President has overturned flatly a recommendation of the Attorney-General.

The President, it was learned, took the position that no cause had been shown why Debs should be set free, and there was no question of justice involved, as his case went to the United States Supreme Court and was decided only after one of the most bitterly fought contests ever recorded.

Mr. Palmer recommended that Debs's sentence be commuted to expire February 12. The Socialist candidate for President will be eligible for parole August 11, 1922, and his sentence would expire with the good behavior allowance on December 28, 1925.

Mr. Palmer submitted a long review of the case in which he said Debs had been severely if not adequately punished and indicated that no further good could be served by keeping him in prison. It was pointed out that Debs was 65 years old, that his health was bad and as a result he probably would be unable to serve the full sentence.

Debs always has been a model prisoner. He was the nominee of the Socialist party President in 1912, 1916 and 1920. He was arrested in October, 1918, following a speech at Canton, Ohio, in which he bitterly assailed the war and this Government's participation in it. He also attacked the selective service draft. Charges against him were brought under the Espionage act and after a legal fight he was convicted and sentenced to ten years in prison. Appeal was taken to the Circuit Court of Appeals and then to the United States Supreme Court.

There has been an unceasing agitation for the release of Debs since he went to prison. The entire Socialist party rallied to his support and he was nominated for President by the party with acclaim when its National Convention met last May.

DETECTIVE IN CELL IN CAR THEFT PROBE

Continued from First Page.

given—fifty-six. It was said that Armstrong had declined to sign the transcript, however.

Color was given the story by the fact that Armstrong, then one of the youngest members of the Detective Bureau, was assigned to the District Attorney's office when Mr. Whitman presided there as chief and that their relations had been friendly. Last night, answering a question, Mr. Whitman phrased his words in this fashion: "Armstrong made no statement to me personally or directly."

Anyway, after being in the Grand Jury room a few minutes yesterday morning Mr. Whitman directed his investigating aid, Detective Al Thomas, to take Armstrong to General Sessions before Judge Crain. There, when the Grand Jury had assembled, Mr. Whitman told the Judge that Armstrong had refused to answer these three questions:

"On May 26, 1920, did you receive \$100 as a reward for the recovery of a Hudson car?"

"On April 19, 1920, did you receive \$50 in cash from an insurance man named Lesner for recovering a Dodge car?"

"On July 18, 1920, did you receive a reward of \$40 cash for recovering a Ford car?"

Immunity Given Automatically.

Armstrong, Mr. Whitman said, had not been asked to sign a waiver of immunity and therefore immunity was granted to him automatically.

"On what ground do you refuse to answer?" Judge Crain asked the detective, but the latter stood silent before the bench until he answered, "Yes, sir," when asked if he wished to have counsel assigned to advise him. Frank Aranow was assigned. He talked with his new client, Whitman suddenly objected. He told the Judge the lawyer was advising the witness that he had a right to decline to answer a question if it tended to incriminate or degrade him. As immunity already had been granted to Armstrong he could not incriminate himself, Whitman contended.

Judge Crain, referring to the questions asked Armstrong in the Grand Jury room, said: "It seems to me plain that these would not tend to degrade you as they cannot incriminate you because you have already received immunity. I instruct you to answer the questions."

Turning to go back to the Grand Jury room, Armstrong was informed by the

Judge that he could be punished for contempt of court if he persisted in his reticence.

"Then, your Honor, your instructions are that I must answer these questions?"

"Yes, they are my instructions."

But, once more facing the Grand Jury, the detective was as mum as before. So once more he was haled before Judge Crain. Mr. Whitman asked that appropriate action be taken. Thomas I. Sheridan, a former Assistant District Attorney, appeared now as Armstrong's counsel and asked the privilege of talking with him. Judge Crain replied that the witness would either answer or be adjudged in contempt of court. Mr. Sheridan said it was true his client gained immunity under the law, but wanted to know if this would protect him in his job in the Police Department. But the Judge turned to Armstrong and said:

"Either you will answer the question or you will not do so. Mr. Armstrong, do you still refuse?"

"Yes, your Honor."

"Then you are sentenced to thirty days in the City Prison and to pay a fine of \$250. I have adjudged you guilty of contempt of court."

Still in Cell Late at Night.

The Judge told the Grand Jury that it might consider the advisability of filing an indictment charging criminal contempt of court. Armstrong was taken to the Tombs. It was supposed his lawyer would try to get him out on a writ of habeas corpus, but late last night the detective was still in a cell.

When Mr. Whitman met reporters he seemed elated over something and said things had gone just as he had expected they would. He produced a list compiled from the records of three insurance companies. They indicated that nine rewards aggregating \$670 had been paid to Armstrong in May, June and July last year for retrieval of automobiles. The payments were May 26, morning, \$100; afternoon, \$50; April 19, \$50; July 8, \$40; other dates unspecified, payments of \$30, \$50, \$100, \$100, \$100.

"These," said Mr. Whitman, "were payments from three insurance companies. There are other companies. You can see why Armstrong did not want to testify. All this money was paid in cash at Police Headquarters. These policemen say it was all right for them to take the money, as they had the permission of the Commissioner, yet when they are asked about it before a Grand Jury they say they might be incriminated if they answered. So we have on exhibition a man wearing the badge of the Police Department refusing to testify on the ground that if he told the truth he would admit that he was a criminal. I stated in the court to-day that if any member of the automobile squad told the

truth, he would admit that he was a criminal.

"The thing has moved as I expected. It shows that the police are more afraid of the system than they are of the law. They will go to jail rather than tell the truth, although by telling the truth they would gain immunity from prosecution. The defense of this officer, Armstrong, which incidentally is not a legal defense, for his refusal to answer is that it could easily be proved if he told the truth that he himself has committed a series of crimes. But his testimony would incriminate others, as I know, and they are powerful enough to seal his lips even with prison staring him in the face."

Mr. Whitman was reminded that Jack Rose and Bridget Weber testified in the Becker case under promise of immunity and that neither of them went to jail.

"There is exactly the same situation here," he replied, "and if these men tell the truth I'll see that nothing happens to them. I think it more important to get the truth than to indict one sergeant."

Mr. Whitman then said it was significant, in his opinion, that all the payments to Armstrong were made in cash and at Police Headquarters.

"At Police Headquarters—get that— and in cash," he repeated. He added:

"There are instances where the money has been paid by check and with the consent of the Police Commissioner, which is required by the city charter, but these are not such instances, and you can see the reason why."

Mr. Whitman was asked to tell just where at headquarters the transactions took place, and in what circumstances.

"I can't tell you about evidence before the Grand Jury," he answered.

Detective Sergeant Hussey is one of the honor men of the Police Department, meaning that he has received a medal for bravery. The indictment charges him with asking for and receiving from Mark R. Decker, an insurance adjuster, \$50 reward for recovering Nathan Schwartz's car. Schwartz and Decker were Grand Jury witnesses. The details of the Hummerick indictment were not made public, as he had not yet been formally taken into custody. It is similar to the Hussey indictment. George Scott, another member of the automobile squad, was asked to be ready to testify before the Grand Jury yesterday, although not subpoenaed. He was excused until Thursday, however.

PAUL D. CRAVATH BETTER.

A statement yesterday from the office of Paul D. Cravath, lawyer, announced that the operation performed on him Sunday at Roosevelt Hospital by Dr. J. Bentley Suter was successful and that Mr. Cravath in a short time will be back in his office.

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